SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 11

CENTRAL KENTUCKY NATURAL GAS COMPANY, APPELLANT,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, OSCAR VEST, AND JAMES HATCHER, MEMBERS CONSTITUTING SAID RAILROAD COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY

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[fol. a]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OK KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

PRÆCIPE FOR TRANSCRIPT OF ADDITIONAL PORTIONS OF RECORD —Filed Oct. 27, 1933

To the Clerk of the above court:

You are hereby requested to make a transcript of the following additional portions of the record herein to be filed in the Supreme Court of the United States on the appeal in the above entitled cause, to-wit:

1. Petition of Intervenors to be made parties to the action, tendered November 2, 1929, and filed December 7, 1929.
2. Order entered December 7, 1929, filing said petition.
3. Motion of Intervenors to dismiss for want of jurisdiction, filed November 8, 1929.
4. Order filed March 8, 1930.
5. Order filed March 24, 1930.

Said transcript to be prepared as required by law and the Rules of this Court, and the rules of the Supreme Court of the United States, to be filed in the office of the Clerk of the Supreme Court of the United States at Washington at the earliest possible date.

Dated October 27, 1933.

J. A. Edge, Attorney for Mrs. George Hignight and others, Intervenors.

Service of above Præcipe accepted and acknowledged this 17th day of October, 1933.

D. L. Hazelrigg, Henry T. Duncan, Attorneys for Central Kentucky Natural Gas Company. Robert H. Winn and Clinton M. Harbison, B. P. Wootton, Attorneys for Railroad Commission of Kentucky et al., Defendants.

[fol. b] In United States District Court for the Eastern District of Kentucky, at Lexington

Central Kentucky Natural Gas Company, Plaintiff,

vs.

City of Lexington, a Municipal Corporation, and S. B. Featherstone et al., Defendants

Petition to be Made Party — the Action—Tendered Nov. 2, 1929; filed Dec. 7, 1929. S. W. Stacey, U. S. Clerk

Now come Mrs. Hignight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Hardy, J. W. Delph, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson and H. E. Stevens, and present this their petition to be made parties to this proceeding, and be permitted along with the defendant, The City of Lexington, and the citizens defendant, S. B. Featherstone, to participate in this proceeding and aid in its prosecution. The petitioners respectfully show the Court that it is provided in Section 37 of the franchise involved in this litigation that "where the rates or regulations as provided for under Section 7 by the Company or the City, any customer, or group of customers of the Company may appear and become a party thereto". These petitioners state that they file herewith as part hereof a copy of said franchise, and mark same for identification Exhibit "A".

[fol. c] These petitioners state that in conjunction with some four thousand other gas consumers of Lexington, that they have been actively participating in the Fayette Circuit Court and the Railroad Commission of Kentucky, cooperating with the City of Lexington in procuring a fair and just gas rate for the citizen of the City of Lexington.

They respectfully ask that they be permitted to become parties hereto and to file such pleadings and to participate in all proceedings in this case as the representatives of the gas consumers of the City of Lexington.

Respectfully submitted.

J. A. Edge, Attorney for Petitioners.

IN UNITED STATES DISTRICT COURT

ORDER FILING PETITION OF INTERVENORS, ETC.—Entered December 7, 1929

"This cause coming on for hearing, came the plaintiff and by leave of Court filed its amended bill of complaint herein, and the same in noted of record.

On motion of Mrs. George Hignight, et al., it is now ordered that the petition to be made a party herein tendered November 2, 1929, be and the same is now filed and noted of record.

This cause came on to be heard on the plea to the jurisdiction of the court, the motion of the defendants and the intervenors to dismiss the bill and the motion of the plaintiff for an interlocutory injunction. The Court heard argument of counsel, and not being fully advised, takes time and it is ordered that said plea and motions be and they are now submitted; the parties hereto being allowed time within which to file briefs."

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTIONS TO DISMISS—Filed March 8, 1930

[fol. d] This cause having been submitted on the motion of the defendants to dismiss the bill of complaint for want of jurisdiction, and also on the motion of the defendants to dismiss the bill of complaint for want of equity, and also on the motion of the Plaintiff for an interlocutory injunction, and the Court being now advised, it is ordered as follows:

1. The motion of defendants to dismiss the bill for want of jurisdiction is overruled, to which ruling the defendants except.

2. The motion of the defendants to dismiss the bill for want of equity is overruled, to which ruling the defendants except.

IN UNITED STATES DISTRICT COURT

ORDER OF SUBMISSION—Filed March 24, 1930

By agreement of parties herein, it is ordered as follows:

1. That by this agreed order the objection to the jurisdiction of the Court are not waived, but are specifically reserved.

2. That this cause be now submitted for final judgment on the pleadings herein and on a duly or properly attested or certified copy of the record, including briefs, in the case of City of Lexington, and others, v. Central Kentucky Natural Gas Company before the Railroad Commission of Kentucky, and that the testimony and exhibits introduced and offered by the parties, as shown by the transcript thereof, before said Railroad Commission shall be considered and used as the testimony and exhibits offered on behalf of the parties hereto, subject to objections for competency and relevancy to be made and heard upon the trial, but provided that the avowals made by parties on behalf of [fol. e] witnesses whose testimony was offered, as shown by said transcript of the testimony before the Railroad Commission, shall be considered as the testimony of said witnesses subject to objections thereto on the ground of competency and relevancy, to be made and heard upon the trial.

2. It is further ordered by agreement of parties that the plaintiff shall have to April 1st, 1930, within which to file its brief; that the defendants shall have to May 1st, 1930, thereafter within which to file their brief or briefs; that the plaintiff shall have ten (10) days thereafter within which to file its reply brief, and the defendants ten (10) days thereafter within which to file their rejoinder brief, should they so desire.

The foregoing order should be entered.

Chas. H. Moorman, Smith Hickenlocker, Circuit Judges. Chas. I. Dawson, District Judge. D. L. Hazelrigg, L. K. Langdon, Chester J. Gerkin, Allen, Botts & Duncan, Attorneys for Central Kentucky Natural Gas Company. City of Lexington, by James J. O'Brien, Mayor. Robert H. Winn and David C. Hunter, Attorneys for the City of Lexington and Others. J. W. Cammack, Attorney General, on Behalf of Railroad Commission and Members Thereof. S. H. Brown, Assistant Atty. Gen. of Kentucky. J. A. Edge, Attorney for Intervenors.

[fol. f] Clerk's certificate to foregoing transcript omitted in printing.

[fol. g] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

NOTICE OF LODGMENT OF ADDITIONAL AMENDMENTS TO THE APPELLANT'S STATEMENT OF EVIDENCE FOR THE APPEAL AND FIXING TIME FOR APPROVAL PURSUANT TO EQUITY RULE 75 (b)—Filed Oct. 28, 1933

* * * * * * *

To the plaintiff and original defendants in the above-styled action:

You, and each of you will take notice that the intervenors, Mrs. George Hignight, and others, have prepared amendments to the appellant's Statement of Evidence for the appeal under Equity Rule 75 (b) for use in connection with the appeal granted herein from the decree entered in the above entitled cause, which said additional amendments to the appellant's Statement of Evidence was this day lodged in the office of the Clerk of the above entitled Court for your examination.

Please take further notice that said intervenors will ask the above entitled Court, and the Judges thereof, to approve said amendments to appellant's Statement of Evidence on Saturday, the 28th day of October, 1933, at 10 o'clock, A. M. of said day, or as soon thereafter as Counsel can be heard, in Chambers of the Honorable Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky, in the United States Government Building in the City of Louisville, State of Kentucky.

Dated October 27, 1933.

J. A. Edge, Attorney for Mrs. George Hignight and Others, Intervenors.

Service accepted this 27th day of October, 1933.

Robert H. Winn and Clinton M. Harbison, B. P. Wootton, Attorneys for Railroad Commission of Kentucky et al. D. L. Hazelrigg, Henry T. Duncan, Attorneys for Central Kentucky Natural Gas Company.

[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

Amendments to the Appellant's Statement of Evidence Proposed by Mrs. George Hignight and Others, Intervenors—Filed Oct. 28, 1933

To the Clerk in the above-styled court:

In addition to the "Condensed Statement of Pleadings before the Railroad Commission of Kentucky and Evidence Essential to a Decision of Questions on Appeal" filed by the Central Kentucky Natural Gas Company in this cause on Monday, January 16, 1933, the intervenors, Mrs. George Hignight and others, state that the following papers and testimony are also essential to a decision of the questions presented by this appeal; and you are requested and directed to make a transcript thereof to be filed in the Supreme Court of the United States pursuant to the appeal allowed herein, as promptly as the same may be done, as follows, to-wit:

1. The Order of said Commission entered February 1, 1928 (Commission Order Book, p. 556), as follows:

ORDER

"This proceeding came on to be heard before the Commission and on motion of the several litigants other than the plaintiff and defendant in the above styled proceeding to consolidate the several gas rate proceedings pending before the Commission. Pending the consideration of said motion it appeared to be satisfactory to the Counsel for the sundry parties that the various parties interested who may desire to intervene in this proceeding might do so and thus present and be heard upon whatever claim they might have [fol. 2] and might desire to make, relative to the entire matter; in consideration thereof, it is ordered that up until

the fifteenth day of February, 1928, such parties may appear and file herein their intervening petition or such other demurrers, motions, and steps as they may deem proper. Whereupon they shall become parties to this proceeding.

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2. The Intervening Petition of William T. McCray and others, filed March 14, 1928, as follows:

PETITION OF INTERVENORS

1. That the Central Kentucky Natural Gas Company is a Corporation, organized under the laws of the State of Kentucky, with power to deal generally in the production and sale of natural gas in the State of Kentucky and various parts thereof.

2. That said corporation is engaged in transacting its business in the County of Fayette, Kentucky, and has been so engaged for more than twenty years last past; that it is also engaged in similar business in the City of Lexington, Mt. Sterling and Winchester, Kentucky.

3. On information and belief the petitioners state that the Central Kentucky Natural Gas Company is now owned, controlled and dominated by the Columbia Gas and Electric Company, a Delaware Corporation.

4. The said Columbia Gas and Electric Company also owns, controls and dominates the United Fuel Gas Company, a corporation organized under the laws of West Virginia and engaged in the production, transportation and sale of natural gas in the State of West Virginia and in the State of Kentucky, and your petitioners state that said Columbia Gas and Electric Company, and said United Fuel Gas Company, being the real parties in interest in this proceeding, should be made parties thereto.

5. That the above mentioned Central Kentucky Natural Gas Company has filed before this Commission a schedule of rates which it is now charging and proposing to charge in the County of Fayette; that upon information and belief these petitioners state that said rates are unreasonable, unjust and extortionate.

Wherefore these petitioners pray that in the event the demurrer herein to the jurisdiction is overruled and that it is adjudged that this commission has jurisdiction herein, then, and in that event, that it proceed to examine the rates charged these petitioners, in the County of Fayette, and to fix a reasonable and just rate to be paid for the natural gas to be provided by said Central Kentucky Natural Gas Company in the County of Fayette, State of Kentucky.

(Signed) J. A. Edge, Attorney for Petitioners."

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3. The special demurrer (Intervening petition) filed before said Railroad Commission on March 14, 1928, by Mrs. George Hignight et al., as follows:

SPECIAL DEMURRER

[fol. 3] 1. That the City of Lexington is a municipal corporation of the second class:

2. That the Central Kentucky Natural Gas Company is a corporation, organized under the laws of the State of Kentucky within the power to deal generally in the production and sale of natural gas in the State of Kentucky and various parts thereof.

3. That said corporation is engaged in transacting its business in the City of Lexington, and County of Fayette, Kentucky, and has been so engaged for more than twenty years last past, and it is also engaged in similar business in the cities of Winchester, Mt. Sterling, Kentucky.

4. On information and belief the petition states that the Central Kentucky Natural Gas Company is now owned and controlled and dominated by the Columbia Gas and Electric Company, a Delaware Corporation.

5. That said Columbia Gas and Electric Company also owns, controls and dominates the United Fuel Gas Company, a corporation organized under the laws of West Virginia, and engaged in the production, transportation and sale of natural gas in the State of West Virginia and in the State of Kentucky and your petitioners state that said Columbia Gas and Electric Company and said United Fuel Gas Company, being the real parties in interest in this proceeding, should be made parties thereto.

6. That the above mentioned Central Kentucky Natural Gas Company has filed before this Commission a schedule of rates which it is now charging and proposing to charge in the City of Lexington; that upon information and belief these petitioners state that said rates are unreasonable, unjust and extortionate.

Wherefore, the petitioners pray that in the event the demurrer herein to the jurisdiction is overruled and that it is adjudged that this commission has jurisdiction herein, then, and in that event, that it proceed to examine the rates charged these petitioners in the City of Lexington, and to fix a reasonable and just rate to be paid for the natural gas to be provided by said Central Kentucky Natural Gas Company in the City of Lexington.

(Signed) J. A. Edge.

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4. The order of said Commission entered on October 9, 1929 (Commission Order Book, p. 158), as follows:

ORDER

"Counsel for both Complainants and Defendant were present in response to call from Chairman Glenn, to discuss the division, and what means should be adopted for the division of Impounded Funds. Mr. J. A. Edge filed with the Commission some four thousand names, and said he would file another list soon. He moves that steps be taken to divide this fund. After discussion of the case, the Commission wrote the order."

[fol. 4] 5. The petition filed on behalf of Mrs. Wellington Payne, Anna Mae Hollinger and four thousand other consumers before the Railroad Commission on the 9th day of October, 1929, as follows:

PETITION

"Now come your petitioners and state that they are citizens of Lexington, Kentucky, and consumers of gas furnished by the Defendant, Central Kentucky Natural Gas

Company, in said City, and present this petition on behalf of themselves and all other gas consumers of Lexington, Kentucky, similarly situated and respectfully petition this Honorable Railroad Commission to require the Central Kentucky Natural Gas Company to pay into this Commission, or to its Receiver, the five cents per thousand cubic feet of gas held by it, and under the judgment and findings of this Commission, subject to be refunded to these petitioners, and those persons for whom they sue, and that this Honorable Commission distribute said five cents per thousand cubic feet, and that it also cause to be distributed the fund now held by Hon. John H. Carter, the receiver under the appointment by this Honorable Commission, after the necessary costs and expenses have been paid.

Wherefore, petitioners respectfully pray that the funds now held by the said gas company be turned over and paid by the receiver of this Commission and that said fund and the fund now held in impoundment by the receiver of this Railroad Commission be distributed to these petitioners and those persons for whom they sue, after the reasonable and proper costs of this proceeding, not chargeable to the Defendant, Central Kentucky Natural Gas Company; they pray for their costs and all proper relief.

(Signed) J. A. Edge, Attorney for Petitioners."

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6. Also the following portions of the testimony and exhibits filed before said Railroad Commission, as hereinafter set forth and enumerated:

(a) At the hearing before the Railroad Commission on March 14 and 15, 1928, John T. Kimball, witness for Central Kentucky Natural Gas Company, filed Company Exhibit No. 4 bearing date January 4, 1928, and entitled "Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc. Based on Operating Reports of the Central Kentucky Natural Gas Company, Inc., for the years 1922 to 1926, Inclusive." The pages of said exhibit (omitted from appellant's "Statement of Evidence") on the subject of Amortization are filed herewith, as a part hereof, marked "Company Exhibit No. 4" being pages 29 to 44 inclusive, attached hereto.

At the aforesaid hearing before the Railroad Commis-[fol. 5] sion said witness, John T. Kimball, testified concerning "Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies". Said witness testified as follows (Transcript of Evidence before Railroad Commission, Vol. 1, pages 203, 212); and on "Cost of Financing" (Vol. 1, pages 99–101).

On page 28 is the summary of the "Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance, and Contingencies". That is subdivided into three major headings, the first being, "Estimated Annual Allowance Necessary for Amortization and Depletion", and that is in turn divided between "Central Kentucky Natural Gas Company, and the Lexington Utilities Company." For the entire system, this allowance is estimated at $158,794, and for the Lexington District, at $94,668.

Referring to page 29, the natural gas utilities differ from other public utilities in that it is not a continuing operation. There is no replenishment of the supply of the commodity, and the service life of a natural gas company is limited by the available supply of natural gas. With the exhaustion of the gas fields, the utility must cease to function. Because of condition, the rate for natural gas should include, as one element, an amount which will permit the Company to recover the value of its property used in public service. In other words, it puts in pipe lines, bores wells, and buys other equipment, and as soon as it is out of gas, it goes out of business, consequently in doing the business it must collect in rates an amount to enable it to collect its investment in its property, and I have made an investigation of how much should be included in the rate, so that the company will get back what it has invested or used in the service, and in getting at this amount, which I call "Amortization and Depletion", I have assumed that the twenty year period is the length of time over which the Company should recover that investment, and that assumption is based on the three following considerations:

1. It is a longer period of time than any conservative investor or banker would consider for sinking fund purposes on securities issued against a natural gas enterprise;

2. It is impossible to foretell with any degree of accuracy, the life of a natural gas field, especially those of West Virginia and Kentucky. Some of these fields, depending on the rate of depletion, go down very rapidly; others not drawn on so rapidly, continue for a longer time. The life of the field depends not on how much is in the field, but on how much is withdrawn, not only at the present time, but during the future years. Thus it is a very difficult thing to estimate the natural life of a natural gas utility. You know [fol. 6] there is gas there to be sold, but how long it will last, is hard to tell. You can go out and determine with fair accuracy how much gas is in the proven acreage, but to tell whether they will find a new field tomorrow, which will change your entire conclusion, is impossible; so I believe an estimate of this kind should not be predicated on a longer period of more than twenty years over which the Company should recover back the money put in its equipment, etc.

The third element I have considered, is that the franchise which this Company has bought, is for a twenty year period, and at the end of the twenty year period, the Company has no rights whatever in the streets of the City of Lexington, or to serve the consumers therein.

So with these three considerations in mind, I have said in this set-up that the Company recover over twenty years this investment.

Now, if the rates are sufficient to permit it, the money which they take in and which is estimated for this case for the entire Company to be $158,794 per year, would be set aside in an investment of the soundest kind, so that the payments on the fund, would exactly equal the property devoted to public service, at the end of the twenty year period; and I have taken that interest rate at the rate of about 3½%, that being the rate which the Federal Government pays on securities at this time; and the soundest rate that I know of so as to absolutely safeguard the fund.

There are certain items of property, however, which obviously have a lesser life than twenty years. For example, the wells of the Red Bush Field, we know were brought in in 1923. From 1923 to the latter part of 1926, they have taken out of the wells, 80% of the original gas; so obviously, at that rate of withdrawal, those wells cannot last much [fol. 7] longer than two years from 1926; as a matter of

fact, at the end of 1927 there was only nine per cent left. That proportion was determined by the drop in rock pressure.

Mr. Duncan: At that rate it would be exhausted in less than two years, would it not?

The Witness: It would.

Now, page 33 is a statement setting forth the details of the way in which this amortization and depletion allowance was arrived at. In the first column of this statement—first column of figures, there is the heading, "Estimated Reproduction Cost New Less Deterioration as of December 31, 1926," and that column of figures will be found on page 31 of Exhibit No. 1.

In the second column on this sheet is the "Estimated Net Salvage" value. When the property no longer functions as a natural gas utility, it may be possible to remove some of the pipe lines and sell them to a junk dealer, who will dispose of them. The same holds good of other equipment. Whatever the Company can get out of it will be that much.

The next column is the "Remaining Life" in years, which I have stated is the twenty year period, with the exception of some of the items which obviously have a lesser life than twenty years.

In the fourth column is the "Rate", and 3.54% is the sinking fund rate; in other words, if you put $3.54 away each year in an investment paying interest at the rate of 3½%, at the end of twenty years you would have $1.00 interest, and that is what appears in this fourth column; you have to put aside twenty times that much in twenty years, or $70.80, but the interest accumulation brings it up to $100 by the end of the twenty year period. So we apply that per cent, and the amount of property subject to amortization, and the product is shown in the fifth column, [fol. 8] which is the amount of money shown that each of these should set aside annually, which would yield the amount of amortizable value at the end of the twenty year period.

The sixth column is the basis of the amortization; which is along the lines that I have described, but in allocating the property of the Lexington District. And the last column is the amount of the amortization charge which ap-

plies to the amount of business done in the Lexington District.

The only bit of additional information in this connection might be in connection with the distribution system property. Upon the exhaustion of natural gas, it is likely that artificial gas will be substituted in Lexington. Naturally the present gas wells will have no place in an artificial gas plant, so that we amortize the whole of the wells; but the mains in Lexington could be used to distribute artificial gas. That applies also to the meters and the service, but there would be required a considerable expenditure to adapt these mains to artificial gas. You must have mains laid to grade and instal drips, which is not necessary in natural gas. Therefore, I have assumed that when natural gas is wholly gone, that the natural gas utilities will be able to dispose of these mains and what is left at 50% of its production cost new; that per cent being what the artificial utility would pay to the natural utility, giving consideration to the fact that it would have to spend considerable money to adapt it to artificial gas, that much money to make it take care of artificial gas. Therefore, I have only amortized 50% of it for the twenty year period.

Page 36 is the same character of set up; that is, the continuation of the Central Kentucky Natural Gas Company and the total is shown on page 37.

Page 38 shows the same computation for the Lexington Utilities Company.

Now on page 39 there is a description of the "Estimated [fol. 9] Annual Allowance Necessary for Extraordinary Maintenance," as follows:

"In order to keep the property in the best operating condition, with the least distortion to net earnings from year to year, provision should be made annually for extraordinary repairs and replacements in addition to ordinary maintenance. This provision is to cover such expenditures as the replacement of pipe, re-rubbering the dresser couplings, and other unforeseen expenditures which, if not provided for annually, may seriously cripple the Company when it is confronted with large expenditures of this character in a single year. These estimated amounts are necessary only to keep the property in good operating condition and they are not considered sufficient to permit

of the creation of a reserve. In other words, over a period of years it is anticipated that the expenditures will equal these allowances, and when natural gas is no longer available the property will then be in substantially the same physical condition as at the present time.

As shown on the following statement the allowance for extraordinary maintenance are made for structures, compressing station equipment, pipe lines, telephone lines, furniture and fixtures, automobiles, and engineering and interest during construction."

And the details of that computation are shown on page 41.

"During the time that the Central Kentucky Natural Gas Company is in operation, it must provide for the annual depreciation of its property, replacement of the parts as they are worn out, must maintain its property in a good, serviceable condition, or it can't meet the service requirement. Therefore, it must, from time to time make rather expensive replacements of the parts worn out. Occasionally the rubber on the couplings which joins the two pipes together must be replaced; they rot out. And that means you have to go out and dig up the pipe lines and that entails an enormous expenditure; and the couplings have to be kept tight; and the expenses have to include an allowance to cover that sort of replacement work. In the determination of these costs for other companies, I have gone back over for periods of ten or fifteen years and found out what it actually cost various companies to maintain their property. I made that sort of investigation of the East Ohio Gas Company that serves the City of Cleveland, with about two hundred and fifty thousand consumers. I went over its records and found that the cost of the replacements have approximated one per cent of the value of the property. I made the same investigation for the Hope Natural Gas Company, and the same for the Logan Natural Gas Company; and these percentages used on this statement on page 41 are predicated on our experience with those companies; and in this case the summary is shown on page 28 for the entire system, both the Central Kentucky Natural Gas Company and the Lexington Utilities Company, and there is annual charge for the Central Kentucky Natural Gas Company of $33,474 and applicable to the Lexington District, $21,262."

* * * * * * *

[fol. 10]

Page 30, Company's Exhibit No. 1, Testified to by J. T. Kimball, Witness for the Company

Lexington Utilities Company, Inc.

Summary Classified by Accounts

Classification	Estimated cost of Reproduction as of Dec. 31, 1926 New	Less deterioration
Organization costs	$20,050	$20,050
Distribution System Property:		
Lexington, Ky.		
Land Owned in Fee	1,920	1,920
Structures	3,069	1,930
Regulator Structures	1,633	1,415
Mains	316,159	290,074
Services	80,334	72,702
Meters	125,493	106,069
Regulators	6,040	5,134
Other Equipment	935	713
Total Distribution System Property	$536,183	$481,166
Construction Overheads:		
Engineering during Construction	21,447	20,347
Legal Expenses during Construction	8,043	8,043
Administration Expenses during Construction	10,724	10,724
Taxes, Insurance and Damages during Construction	5,362	5,362
Interest during Construction	36,505	33,138
Total Construction Overhead	$82,081	$77,614
Cost of Financing	$25,797	$25,797
Total Property	$670,711	$611,227

[fol. 11] (b). Excerpt from Direct Testimony of J. T. Kimball as Witness for the Defendants from Volume 1 Page 99 to 101 on March 14, 1928.

The next major division of the property is the "Cost of Financing", details of which are shown on page 126. In that item is included cost of assembling the money necessary to construct property such as that of the Central Kentucky Natural Gas Company. It has been estimated at 4% of the cost of that.

Mr. Edge: I would like to ask whether you estimated it or had it done?

The Witness: I have estimated that at 4%, and that, in my opinion, is an ultra conservative estimate. Recently Ford, Bacon & Davis constructed and promoted an electric light and power plant down in the Pecos Valley in

Western Texas to supply the power for oil wells; and in doing that we had to go to the bankers to get that money, and it cost about 10 points; that is, $10 on every $100 raised, to get that money; that is what the bankers charged us for their services in supplying us with money to go ahead and build that power plant. There have been two natural gas power plants financed by us recently down in Texas.

Judge Lilly: We object to that.

The Witness: I am merely attempting to show the basis of my estimate.

Judge Lilly: This record would be interminable if he goes into that.

Chairman Glenn: Mr. Edge asked him how he arrived at that 4%.

Judge Lilly: He asked him if he was making a statement from his own knowledge or on information received from somebody else.

Mr. Duncan: As I understand it, he is giving the reason why he estimated it at 4% and how he arrived at it.

Chairman Glenn: Yes, sir; I think that is perfectly competent. Go ahead, Mr. Kimball.

The Witness: Very recently there have been natural gas projects down in Texas where the rate has ranged from 5% to 8% or 9%, as I recall. I recently had occasion to make an engineering report for a banking house in New York for the financing of a natural gas enterprise in Kansas, and of my own knowledge the cost there was from seven to ten dollars for every hundred dollars for furnishing money by that banking house.

[fol. 12] I have recently worked on a large number of toll bridges which have been financed by banks, and I know of my own knowledge that the cost ranges from seven per cent to ten per cent of the money involved in the construction of those toll bridges. It represents the service that they render, just as an engineering firm renders in the construction of any project. They have to furnish and distribute the capital with which to finance the enterprise.

Cross-examination of December 12, 13, 1928:

Counsel: On the next page, 126, you have written in cost of financing, on which you have taken four per cent of

$3,650,695 and brought in a capitalizable asset of $146,028. Does your experience as an engineer, and your knowledge of the rules as set out by the Supreme Court in cases of this nature, justify that charge?

The Witness: My experience as an engineer does.

228. Do you know anything about some decisions from the Supreme Court on the subject?

A. If you are referring to the Galveston case, I read that.

229. From the Supreme Court of the United States?

A. I can quote it for you if you wish.

230. But you remember it?

A. They excluded an item called brokerage.

231. In what respect does this item differ from the four per cent brokerage item in the Galveston case?

A. I can only tell you what this includes: this is the service rendered by the bankers in assembling the capital necessary to construct this plant, and it is analogous to service that you might render for the Company or that I might render as an engineer to the Company. They go out and sell and distribute these bonds through the Company, sell them to the public.

[fol. 131] 232. Do you not know that the Supreme Court has in the Galveston case denounced that as any such item of cost?

The Witness: I don't know that that brokerage item is the same item that I have included.

233. Do you agree with them, that brokerage should be excluded?

A. I think that there is a very real service supplied by bankers in assembling capital.

234. You don't agree with the Supreme Court then, do you?

A. There is a question, and I am not prepared to say whether I do or do not.

219. Do you chance to know how successful the Central Kentucky Natural Gas Company has been in the past?

A. Those exhibits show since 1922.

220. Do you know anything about there being a bond issue?

A. I believe they were originally financed in that way.

221. How much?

A. As I remember the figure, it was $600,000.

222. Or possibly $800,000?

A. I don't know; I thought it was six.

223. Do you know whether that has been retired from earnings?

A. Been retired.

224. From what sources?

A. Sacrifice of profits because they didn't pay themselves a fair and reasonable return on the property.

225. Do you know what dividends they have been drawing and for how long?

[fol. 14] The Witness: That is not relevant; but I have the figures here.

226. Have you the figures there?

A. Yes; I have all the figures here.

Counsel: I wish you would tell me what dividends they have drawn, paid.

Mr. Duncan: We desire to interpose an objection that that has no relevancy upon the questions at issue, that is, the value of this property today.

Judge Winn: In the customary course of the practice, I will state that I will connect it; I make that averment.

Chairman Glenn: Proceed then.

To the above ruling of the chairman of the Commission, counsel for defendant excepted.

The Witness: Of course, the amount of dividends paid, unless expressed in value of the property on which they were earned, mean little or nothing. The corporation may be under capitalized or over capitalized, but the true value in the figure on which it should be computed in percentages; but I will give these figures in dollars, not in percentage:

In 1906 there was no dividend;
In 1907 there was no dividend;
In 1908 it paid $75,000;
In 1909 it paid $37,500;
In 1910 it paid $75,000;
In 1911 $37,500;
In 1912 there was no dividend;
In 1913 there was no dividend;
In 1914 there was no dividend;
In 1915 there was no dividend;

[fol. 15] Beginning 1916 and each year thereafter up to and including 1926, which is as far as my record goes, the dividend was $90,000 per year.

227. Do you know what the capitalization of the Company has been throughout this time?

A. No.

228. $1,500,000?

A. They may have had a great surplus; I don't know.

229. And you don't know what the capital was or is now?

A. No, I can't state that.

230. Do you know for what that capitalized stock was issued in the beginning?

A. No, I don't.

231. Do you know whether any money at all was paid in for it other than turning over the lease?

A. I am advised that the promoters, which correspond to my originators, got a very substantial block of that $50,000 for their services.

232. Do you know how substantial?

A. No.

233. Wasn't it all issued as a bonus?

A. I don't know.

234. Your testimony as to value has been based solely upon this theory of reproduction cost less depreciation, has it not?

A. Yes, less deterioration, I prefer to call it.

Counsel: I will adopt your phraseology.

Can you tell the Commission how many dollars of deterioration you have allowed in this property up to December 31, 1926, all told?

[fol. 16] The Witness: Yes, that can be computed from the statement on page eight of Exhibit Number One, and it is merely the difference between the cost of reproduction new and the cost of reproduction new less deterioration, and those figures are for the Central Kentucky Natural Gas Company, or possibly you prefer it for both that Company and the Lexington Utilities Company.

Counsel: I would, sir.

The Witness: Both, $4,715,434 cost new, from which should be deducted the amount of deterioration, which leaves $4,280,627 cost new less deterioration; that difference amounts to $434,807.

Counsel: Now, you have valued the entirety of the property as under your figure at $4,715,434 which during twenty years of life you have depreciated to $4,280,627—or de-

teriorated. What per cent of deterioration is that during the twenty years of the life of the Company?

The Witness: Well, that isn't quite the way to express it.

Counsel: Do you mind calculating and telling what percentage $434,807 is of $4,715,434?

The Witness: I will make the computation for you. (The witness does so.) That is 9.4 per cent.

235. Which during the twenty years means that the entire properties of the Companies, according to your estimates here, have deteriorated slightly under one half of one per cent per annum.

[fol. 17] The Witness: Absolutely not. I can come here thirty years from now, and if the Company continues, it will be in that same relation, and as the property wears out, it substitutes new property, so that it remains the same practically from year to year.

235. Suppose the Company takes out from the expense account these replacement costs, is it still justifiable, in your judgment, to depreciate your property less than one half of one per cent a year?

A. I haven't depreciated it that.

236. You have depreciated it $434,807 and this is mathematically correct, isn't it?

A. Yes, but you are relating two things that are not relatable.

Counsel: All right. I looked at page eight of your Exhibit Number One, at the foot of it, and I find these totals, new, $4,715,434; less deterioration $4,280,627, and for me you figured the difference between the two figures as $434,807?

The Witness: Yes.

Counsel: Now, as against that, I asked you whether or not any additions that have been made to keep the property up to an A 1 condition have not been charged on the Company's books and taken out as an annual expense?

The Witness: I don't think that is wholly true.

[fol. 18] 237. In what part is it true?

A. It is partly true, but not 100% true.

238. To what extent is it true?

A. I don't know exactly, but I know that they took out some of the plant line and borrowed money to replace it, but in general, for the purposes of your argument, I will grant you that it comes out of expenses.

Counsel: On page 42 of your Exhibit Number Four you have allowed as an annual expense against earnings what is termed "Estimated Annual Allowance Necessary for Extraordinary Maintenance" and against the Lexington district $12,878; on sheet 43 for the distribution system property you have made a similar allowance of $8,384.

The Witness: That is for the Lexington Utilities Company.

Counsel: Or a total for the two of——

The Witness: Twenty-one thousand dollars plus.

Counsel: I believe that you have said that these sums are utilizable or are to be utilized in keeping the property up in high operating condition?

The Witness: Yes.

Cousel: On page 28 of your Exhibit Number Four you have this annual charge against the earnings, "Estimated Annual Allowance Necessary for Amortization, Depletion, [fol. 19] Extraordinary Maintenance and Contingencies," for the Lexington District of $94,668, which figures embrace as well the like item for the Lexington Utilities Company, being $82,477 for the Central Kentucky Natural Gas Company and $12,191 for the Lexington Utilities Company, a total of $94,668. Will you please explain to the Commission what this is?

The Witness: Yes, the two items combined, the amortization charge and the extraordinary maintenance charge are what are commonly grouped by many under the term depreciation, but I have chosen in this instance to divide the two as they add to $115,800 in round figures, which is equivalent to about four per cent of the valuation that I have placed on the property; and as to what each of those items embrace, I believe that I covered fully in the direct testimony.

239. What do you mean "amortization"? What is the ultimate end of building up and creating that fund?

A. Amortization is to return to the owners of the property the value of that property after, for natural gas purposes, it is fully depleted and it then has no further value as a natural gas utility.

240. And you have taken that in this instance at twenty years?

A. I have predicated these figures on an estimate of twenty years.

241. And what rate of per cent have you utilized in using an annual charge of $94,668?

A. I have assumed that that sum would be invested in Federal Government securities, which would yield around 3½ per cent, and that plus the interest accretions at the [fol. 20] end of the twenty year period would add up to the amortizable value of the property, which would at that time have no value.

242. So that is what you mean by amortization fund?

A. Yes.

Counsel: At the same time that you build up this amortization fund, you make an outlay of earnings each year of $20,000 necessary to keep the property in A-1 condition?

The Witness: That is right.

243. Is that justifiable?

A. Yes.

244. To cover the cost in both ways, take out amortization fund on your property and also take out a fund to keep the property in 100% condition each year?

A. Of course the amortization fund is not to take care of the replacements of the property, but only to return to the owners at the end of twenty years the value of the amortizable property. The $20,000 is to take care of the depreciation.

245. And you state to the Commission that both of them are proper charges?

A. Yes.

246. You have figured as I recall, a depreciation during the twenty odd years that this company's lines have been laid of some 10% and you are now going upon the theory that during the next twenty years the property will be depreciated 90%, its physical property will be depreciated 90% at least?

A. No, it will have a salvage value at that time to which I have given effect in these figures and to take care of [fol. 21] the value that has been totally lost to the time that it has no further value.

247. To do that, you have assumed that all available supplies of natural gas in the field will be exhausted?

A. The basis of that twenty year assumption is set forth on page 29 of Exhibit Number Four.

248. That is your theory. Is that correct?

A. Yes, as set forth on this page.

249. Do you know whether or not the Central Kentucky Natural Gas Company has sought new customers, has entered new towns?

A. I presume they have.

250. Have laid out new pipe lines and the like?

A. Yes.

251. And you assume that that was done, knowing that their life would only last twenty years?

A. No, that only estimates; that is a conservative estimate. It probably would last twenty years.

252. What about the limited supply?

A. I haven't testified that they have a limited supply.

253. You don't mean to say that it does now?

A. No.

254. Do you know who owns the stock of the Central Kentucky Natural Gas Company?

A. I believe the Columbia Gas and Electric Company owns a large block of it.

255. Isn't the United Fuel Gas Company a 100% subsidiary of the Columbia Gas and Electric Company?

A. I don't know, but it has a large interest.

256. Who is the big owner of the acreage from which this gas is coming?

[fol. 22] A. I presume the United Fuel Gas owns a large part of the acreage.

257. In other words, this Company that is distributing it in Kentucky and that Company are for all substantial pruposes one and the same Company?

A. Practically so, but legally that isn't true.

258. And so far as the supplies that are available are concerned for twenty or thirty years or forty years, that supply is to be determined not by what the Central Kentucky Natural Gas Company may have, but by what the United Fuel and the Columbia may have?

A. Oh, sure; as they extend their territory and deplete their territory and their reservoirs, the Central Kentucky Natural Gas Company will suffer along with the rest.

259. And any man that is foolish enough to build other pipe lines and go away from where he has a good market, you won't say that he is entitled to amortize the value of his property?

A. He is entitled to get his money back.

260. Even though he destroys it by going into other fields and destroys the life of it by going into new fields like the Central Kentucky Natural Gas Company is by going into Cynthiana and Georgetown?

A. He has got to get his money back. Naturally if he can get it back in five years he don't want to string it out over twenty years.

261. Is that good management?

A. From the Company's standpoint.

262. Don't you know where they have unbounded supply of gas that their theory has been to conserve it for the cus-[fol. 23] tomers already attached?

The Witness: About eight years ago the companies operating in Virginia thought that they had a very limited supply of gas and they preached conservatism and that went all the way to Cleveland but there have been extensions and they have discovered new fields and the situation is not in the same category, but we can't tell today what the situation will be tomorrow, and I state this is a conservative figure to which this company is entitled, and the company will suffer no detriment thereby by setting aside an allowance that will permit the money to come back to the owners over a period of twenty years. Many of them have amortized the property, not over twenty years, but over a period of ten years.

263. And with a consequently larger return to them?

A. No.

264. The shorter term upon which they predicate the life of the company, the shorter the time upon which they predicate the exhaustion of the natural gas, must be followed from very necessity, if your theory of amortization be sound, by increased amortization each year.

A. Of course if they increase the amortization, and if it didn't work out, then the proposition fell through and they didn't go ahead with it.

Counsel: Now, this much is true, in order that the Commission and I may understand it—here's a charge of $94,968 which is a matter of bookkeeping you are taking out of the Company's earnings each year and piling up in the Company's treasury, in order that at the end of twenty

years the Company may have in its coffers from this charge alone the total value of its entire property.

The Witness: Such of it as it at that time not further [fol. 24] used or useful.

Counsel: But you have taken all of it into consideration?

The Witness: No. I have said that a certain amount of it had a salvage value.

265. What part of it?

A. The distribution system in the City of Lexington. When natural gas is gone, the city will not doubt introduced artificial gas and use the same distribution system, and I have not amortized that.

266. Do you know anything about cannel coal as gas producing coal in that section and in Inez?

A. No.

267. So that you would not be able to state whether as a practical business use it would be practicable to use the cannel coal there and supply artificial gas for this section of the country?

A. Ford, Bacon & Davis has never made any study of that with respect to Inez, but we have made comparable studies with respect to such a thing in Virginia, with the idea of conveying that gas to Cleveland, and it was found not to be feasible.

268. Where did you get those figures?

A. In our office. I didn't personally make the figures.

269. Mr. Kimball, do you as an engineer or an expert in matters of this nature give any heed to the test of bargain and sale as a test of value.

A. No. That doesn't enter into the determination of the figure used for a rate basis, because that in itself is predicated upon earnings.

270. Do you know anything about the sale of the Cen- [fol. 25] tral Kentucky Natural Gas Company to the Columbia Gas and Electric Company since this franchise was entered into?

A. I merely know that there was an exchange of securities.

(c) Also the exhibit filed by the witness John T. Kimball on behalf of the Company designated as Company Exhibit No. 4, being pages 28 to 44 inclusive, attached hereto.

[fol. 26] (d) Excerpts from testimony of James A. Yunker before the Railroad Commission on June 27-28, 1929.

At the hearing before the Railroad Commission on June 27 and 28, 1929, James A. Yunker testified on behalf of Central Kentucky Natural Gas Company, as follows:

I live in Louisville and I am the Gas Engineer for the Louisville Gas and Electric Company which supplies natural gas to the City of Louisville and draws its natural gas supply from eastern Kentucky. For the past eight years it has been my duty to keep tab on all gas wells in Kentucky. Whenever a gas well is drilled we send someone to inspect it. The information is kept in my office, under my charge. I have made particular investigation of gas wells and gas supplies in eastern Kentucky. I have examined the statement of Lucien Beckner filed in this action setting forth his estimate of gas reserves in eastern Kentucky. I file herewith a map showing the counties in eastern Kentucky and the quantity of gas reserves as estimated by Mr. Beckner in each of *each* counties. The map has been drawn to scale.

* * * * * * *

In Pike County there have been a number of wells drilled during the past five or six years. Most of it has been negative. The drilling during the past three years shows gas in some areas in economic quantities, but 87% of the drilling has proved that the area in which the drilling was done did not contain gas.

In Leslie County several wells have been drilled in the last ten or twelve years. Our Company drilled on well down to the corniferous sand, the lowest producing sand in Kentucky. This well was dry. I know of no well that has been drilled in Leslie County that produced any gas.

In Letcher County all wells drilled to date have been negative.

In Perry County I do not know of any gas wells having been drilled.

In Knott County a number of wells have been drilled. Our Company drilled some twenty to twenty-five wells. The portion of Knott County which represents the northeastern corner contains gas. The balance of the territory that has been drilled has always been barren to this time.

In Knox County — was discovered in 1906 on the Big and [fol. 27] Little Richland Creek. A number of wells were drilled after that, but none produced gas in sufficient quantity to warrant piping into the town in the immediate neighborhood. Recently the Petroleum Exploration drilled what promised to be a promising well in the north central portion in Knox County. The Petroleum Exploration drilled two more wells which were dry.

In Clay County there are two promising gas developments at the present time. The number of wells drilled has been very limited but apparently some gas has been produced from that County.

In Carter County the drilling has not resulted in and economic production of gas.

In Martin County no gas has been produced since 1890. It was supposed to be largely depleted but drilling in the last two or three years has shown the existence of other gas areas.

In Laurel County there has been considerable drilling. During the oil excitement in 1916 and 1918, drilling was conducted in Lee, McCreary, Laurel and Pulaski Counties. None of them have produced economic gas wells.

In Greenup County there has been drilling but no economic gas wells have been developed.

In Whitley County there are some small gas wells but it has never been deemed of fixed quality (sufficient quantity) to warrant taking it to market.

In Pulaski County a number of wells have been drilled, but I know of no gas wells in that County.

In Boyd County, gas has been produced from wells in the shale for a number of years, and there are some wells in the City of Ashland.

In Magoffin County, three promising pools have been discovered. Some of these are partially depleted. Other promising wells have been drilled.

In Brethitt County one gas field has been discovered on Frozen Creek known as the Big Six field. The gas in that field has been practically exhausted. Our Company, in conjunction with the timber company, owning about thirty thousand acres, drilled five dry holes. There are no other producing wells except those on Little Frozen. We abandoned our wells.

[fol. 28] In Lewis County there has been no drilling to my knowledge.

In Elliott County there is one field. It has never been connected with the pipe line as a portion of it has been condemned by subsequent drilling. Some of the gas contains sulphur, and it is not as valuable as it otherwise would be.

In Jackson County there has been a fair amount of drilling, but no gas has yet been discovered.

In Rockcastle County a few sporadic wells have been put down, but I know of no gas development in that county.

In Rowman County I know of no gas, nor of any drilling for oil or gas in that County.

In Owsley County, the Petroleum Exploration owns a gas field but there is no gas in that County to my knowledge, outside of that development.

In Morgan County there has been considerable drilling, but the gas development has been very disappointing. Two small areas have been developed and this gas is locally used. Most of the drilling has been unsuccessful.

In Menifee County there is no gas field outside of that owned by the Central Kentucky Natural Gas Company.

In Wolfe County there is a small gas field in the northern end. It appears that there may be some gas produced from this county. At least half of Wolfe County has already been condemned by drilling.

In Wayne and McCreary Counties there has been considerable drilling for oil and in sporadic instances gas wells have been struck. Nothing has been done with the gas and from my interpretation of the term, gas has not been found in commercial quantities.

In Johnson County a number of wells have been drilled, but no gas areas have been discovered.

In Lawrence County some gas has been produced and there are a number of wells in that County.

Lee County, due to the oil excitement, has been almost [fol. 29] completely drilled up, and I know of no gas wells left there.

In Powell County there has been drilling, but I know of no gas wells in that County.

In the year 1928 the total withdrawal of natural gas from eastern Kentucky was, I should say, 22 billion cu. ft. I have made an estimate of the probable withdrawal of gas

from eastern Kentucky in 1929 and my estimate is that there will be withdrawn during 1929 in excess of 30 billion cu. ft.

The witness filed a map designated as "Yunker Exhibit No. 1." A photostat copy of this map is attached hereto.

I should hardly say that gas reserves in Pulaski, Laurel, Clay, Leslie, Perry, Knott, Pike, Letcher, Knox and Whitley Counties would be available to the Central Kentucky Natural Gas Company, through its present lines. Gas in those counties would be closer to Lexington than to the present transmission lines of the Central Kentucky Natural Gas Company. It would not be economical or practicable to bring gas from those counties to Lexington through the present transmission lines of the Central Kentucky Natural Gas Company.

Cross-examination of James A. Yunker by Robert H. Winn, Esq., of counsel for complainants:

Q. Your name is what?
A. Yunker.

Counsel: Spell it, please, sir.
The Witness: Y-u-n-k-e-r.

Q. Where were you born, Mr. Yunker?
A. Louisville, Kentucky.
Q. Lived there all your life?
A. Yes, sir.
Q. How old are you?
A. Thirty-nine my nearest birthday.
Q. Have you kept the same sort of watch of the Western Kentucky gas, as you have of the Eastern Kentucky?
A. Not as comprehensive.
[fol. 30] Q. Do you know anything about it?
A. Yes, sir.
Q. Any developments down there?
A. Yes, sir.

Mr. Duncan: We object; don't see how it has any bearing on this case.

Chairman Glenn: We sustain the objection.

Judge Winn: Have you the same knowledge of the West Virginia fields as you have of the Kentucky fields and of the supplies there?

The Witness: No, sir.

Q. Know nothing about the supplies in West Virginia?

A. We never had airy wells there and know nothing about it.

Q. Do you know whether the United Fuel is supplying gas now in the Central Kentucky line?

A. I know it is.

Q. Do you know as a matter of fact that it and the Central Kentucky Natural Gas Company are owned by the Columbia Gas & Electric Company?

A. Yes, sir.

Q. Mr. Yunker, you know Mr. Beckner?

A. Yes, sir.

Q. In whose employ is he?

A. Mr. Beckner at present is working as consultant, geologist for the Louisville Gas & Electric Company.

Q. That is the same corporation with which you work?

A. Yes, sir.

Q. That is a subsidiary of the Byllesby Corporation? [fol. 31] A. Yes, sir.

Q. Since when?

A. 1913.

Q. Do you know anything about Mr. Beckner having been asked as a geologist to make up in the last year or so, an estimated calculation of the supply of gas in Eastern Kentucky?

A. Yes, sir.

Q. Do you know whether he made for them the same figures that he supplied here?

A. I know he said one trillion and three million.

Q. For what purpose was that made?

A. To estimate the reserve in Eastern Kentucky.

Q. Do you know if that wasn't for the purpose of some negotiations that this estimate of reserve was made by Mr. Beckner for the Louisville Gas & Electric Company?

Mr. Duncan: We object; that is going pretty far afield. They asked him if he did make it, and that is sufficient.

Judge Winn: They have attacked Mr. Beckner's estimate and his reputation here. It is my purpose to show that

his work is acceptable as a geologist and has been accepted by the same corporation with which this gentleman is, and for whom he appears.

Mr. Duncan: We are not attacking Mr. Beckner as a geologist. He has done the best he could. We are simply showing that the actual experience of this Company has been in the counties where Mr. Beckner has endeavored to set up a reserve. That has nothing to do with Mr. Beckner's ability.

Chairman Glenn: You are introducing him as in rebuttal to Mr. Beckner.

[fol. 32] Mr. Duncan: Why, of course.

Chairman Glenn: He got up this same information for the Louisville Gas & Electric Company, therefore, we hold that he should answer this question.

Judge Winn: Here's the question: Do you know for what purposes, or for purposes of what negotiations the Louisville Gas & Electric Company had Mr. Beckner to make up this exhibit?

Mr. Duncan: We object.

Chairman Glenn: State your objection.

Mr. Duncan: That simply goes into the question of some business relation between the Louisville Gas & Electric Company and some other concern, and has no possible bearing on this case.

Chairman Glenn: For the same reason that the witness got up a similar statement for his Company, that they are both working for now, as he got up for this company, for that reason he may answer the question.

Mr. Duncan: I don't understand what you mean by "for his Company."

Chairman Glenn: He said he got up a statement for the Louisville Gas and Electric Company; Judge Winn asked him a while ago.

Mr. Duncan: But that is the only one he got up.

Chairman Glenn: I thought he got up a statement of this same field, his same locality, for this Company?

[fol. 33] Mr. Duncan: Which Company? There is only one Company that he has done that for.

Chairman Glenn: You asked him a while ago if he was working for the same Company that Mr. Beckner does, who got up this statement. You say he has a right to get this up.

We say he has. He testifies he is working for the same company; then he is competent to get up this.

Mr. Duncan: If Your Honor pleases, that wasn't the question. The question was, assuming, for the sake of the argument, that Mr. Beckner was competent, the reason why he got it up, or the Louisville Gas & Electric Company, got him to do this, has no bearing on this case. What the negotiations were between the Louisville Gas & Electric Company and some other concern has nothing to do with it.

Chairman Glenn: We have overruled your objection. Answer the question witness.

Mr. Duncan: We save the exception.

The Witness: Yes, sir.

Q. Was that for negotiations that the Louisville Gas and Electric Company was making?

Mr. Duncan: We object.

Chairman Glenn: I overrule your objection.

Mr. Duncan: Save our exception.

A. Mr. Beckner was asked to prepare this estimate of the gas in Eastern Kentucky because we were at that time con-[fol. 34] sid-ing purchasing sufficient acreage in Eastern Kentucky to provide a long time reserve for the Louisville Gas & Electric Company.

Q. Now, are you a geologist?

A. No, sir; I was at the time this report was made up, the head of the Geological Department of the Louisville Gas and Electric Company.

Q. Have you attended any geological school?

A. No, sir.

Q. Had any training as a geologist?

A. No, sir.

Q. Do you know whether Mr. Beckner is still a consultant geologist for the Louisville Gas and Electric Company?

A. Yes, sir.

Judge Winn: I believe that is all.

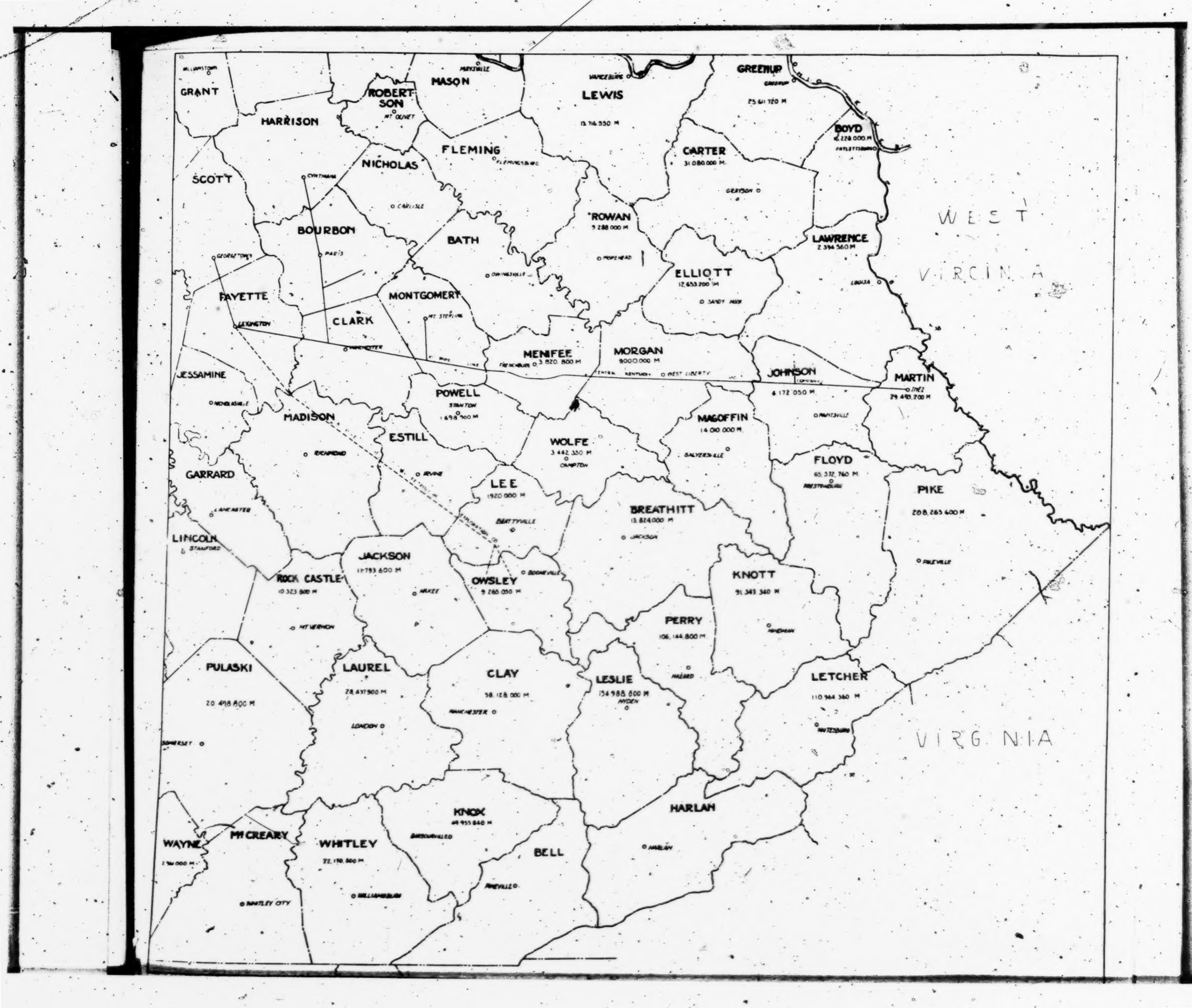
Chairman Glenn: Do you want to ask him anything further?

Mr. Duncan, No, sir; that is all.

And further the witness sayeth not.

* * * * * * *

(Here follows map, side folio 35)


GRANT
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PARIS
BATH
OWINGSVILLE
LAWRENCE
2 394 560 M
GEORGETOWN
ELLIOTT
12 653 200 M
SANDY HOOK
LOUISA
FAYETTE
LEXINGTON
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MT. STERLING
CLARK
WINCHESTER
MENIFEE
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JOHNSON
6 172 050 M
MARTIN
29 480 200 M
JESSAMINE
NICHOLASVILLE
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1 698 900 M
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ESTILL
IRVINE
WOLFE
3 442 350 M
CAMPTON
MAGOFFIN
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SALYERSVILLE
PAINTSVILLE
FLOYD
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PIKE
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PIKEVILLE
LINCOLN
STANFORD
JACKSON
11 793 600 M
BOONEVILLE
ROCK CASTLE
10 323 800 M
MUNCIE
OWSLEY
9 265 050 M
KNOTT
91 343 340 M
HINDMAN
MT VERNON
PERRY
106 144 800 M
HAZARD
PULASKI
20 498 800 M
LAUREL
28 437 500 M
LONDON
CLAY
58 128 000 M
MANCHESTER
LESLIE
154 988 800 M
HYDEN
LETCHER
110 964 360 M
WHITESBURG
SOMERSET
VIRGINIA
KNOX
69 955 840 M
BARBOURVILLE
HARLAN
WAYNE
2 541 000 M
McCREARY
WHITLEY
22 170 900 M
BELL
PINEVILLE
HARLAN
WILLIAMSBURG
BARBOURVILLE

[fol. 36] October 27, 1933.

J. A. Edge, Attorneys for Mrs. Geo. Hignight and Others, Intervenors.

We acknowledge receipt of a copy of the foregoing proposed amendments to the record and statement of evidence to be used on the appeal of this cause now pending in the United States Supreme Court.

This 27th day of October, 1933.

D. L. Hazelrigg, Henry T. Duncan, Attorneys for Cetral Kentucky Natural Gas Company. Robert H Winn and Clinton M. Harbison, B. P. Wooton, Attorneys for Railroad Commission of Kentucky et al., Defendants.

[fols. 37 & 38] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

ORDER ALLOWING AMENDMENTS—Filed Oct. 28, 1933

It appearing to the Court that the United States Supreme Court has continued the hearing of this appeal until November 6, 1933, in order that Mrs. George Hignight and others, as Intervenors herein, and as Appellees, might have an opportunity to have transcribed and certified to the Clerk of the United States Supreme Court additional portions of the record and evidence herein; and it further appearing that said Intervenors have lodged with the Clerk of this Court Additional Amendments to the Statement of Evidence of Appellant to be transcribed and certified by the Clerk of this Court, and that notice of said lodgment has been given to and accepted by the Attorneys for the Plaintiff and the Defendants herein,

It is now ordered:

1. That the aforesaid additional amendments be, and the same are now hereby approved, and

2. The Clerk is directed to file the same and certify a transcript thereof to be filed on behalf of said Intervenors and Appellees, with the Clerk of the United States Supreme Court for the purposes of the appeal. To so much of the foregoing order as provides for the certification of evidence of appellant's witnesses John T. Kimball and James A. Yunker, the appellee City o Lexington and the appellant object.

Chas. H. Moorman, U. S. Circuit Judge. Smith Hickenlooper, U. S. Circuit Judge. Wm. J. Dawson, U. S. Dist. Judge.

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 40] COMPANY EXHIBIT No. 4

(Pages 28 to 44, Inclusive)

Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., Based on Operation Reports of the Central Kentucky Natural Gas Company, Inc.

January 4, 1928

Filed with statement of Evidence under Equity Rule No. 75(b).

Filed Oct. 28, 1933.

Ford, Bacon & Davis, Incorporated, Engineers, New York, Philadelphia, New Orleans, Chicago, San Francisco.

[fol. 41]

Central Kentucky Natural Gas Co., Inc., Lexington Utilities Co., Inc.

Summary of Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance, and Contingencies

	Entire system	Lexington district
Estimated Annual Allowance Necessary for Amortization and Depletion:		
Central Kentucky Natural Gas Co., Inc.	$146,603	$82,477
Lexington Utilities Co., Inc.	12,191	12,191
Total	$158,794	$94,668
Estimated Annual Allowance Necessary for Extraordinary Maintenance:		
Central Kentucky Natural Gas Co., Inc.	$25,090	$12,878
Lexington Utilities Co., Inc.	8,384	8,384
Total	$33,474	$21,262
Estimated Annual Allowance Necessary for Contingencies:		
Central Kentucky Natural Gas Co., Inc.	.....	.....
Lexington Utilities Co., Inc.	.....	.....
Total	$10,000	$5,600
Total Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	$202,268	$121,530

[fol. 42] Estimated Annual Allowance Necessary for Amortization and Depletion

A natural gas utility differs from other public utilities in that it is not a continuing operation. There is no replenishment of the supply of the commodity and the service life of the natural gas utility is limited by the available supply of natural gas. With exhaustion of the gas fields, the utility must cease to function. Because of this condition, the rates for natural gas should include, as one element, an amount which will permit the Company to recover the value of its property used in public service.

In estimating the annual allowance necessary for amortization and depletion, an amortization period of 20 years has been used for all amortizable property, except for certain unites of property which, obviously, have a life of less than twenty years. The use of a twenty-year amortization period is based on the following three considerations:

(a) It is a longer period of time than any conservative banker would consider for sinking fund purposes on securities issued against a natural gas enterprise.

(b) It is impossible to foretell with any very great degree of accuracy the life of the natural gas fields of West Vir-

ginia and Kentucky. Their life is dependent not only upon the gas content of the present known fields, but also on the rate of withdrawal and the possible discovery of new fields. Thus an estimate which at the best must be very speculative, should not exceed twenty years.

(c) The franchise in Lexington is for a twenty-year period.

[fol. 43] The annual amortization allowance is based on a 3½ per cent sinking fund. This results in an annual sum which, invested at 3½ per cent, will yield the amortizable value of the property at the end of twenty years.

The amortizable value, as shown on the following statements, is the estimated reproduction cost new less deterioration as of December 31, 1926, less the estimated net salvage value at the end of the amortization period. The estimated net salvage value represents the amount which can be realized on the pipe lines, compressing stations and other unites of property, giving effect to the cost involved in salvaging that property. With respect to the distribution systems in the several communities served, it is estimated that the salvage value, when the Company ceases to operate as a natural gas utility, will be 50 per cent of the estimated reproduction cost new as of December 31, 1926, it being assumed that the Company will be able to dispose of its distribution systems at that value to some successor artificial gas company.

The amortization period for the Red Bush Field is estimated to be two years, based on the rate of decline in rock pressure in this field. The remaining life of the Red Bush Compressing Station and Branch Line is estimated to be six years, based on the assumption that the compressing station and pipe line will be used to handle gas purchased in the vicinity for four years after the Red Bush wells are depleted. The Johnson-Magoffin Branch Line transports purchased gas to the main line, and its estimated amortization period of eight years gives effect to the probable depletion of this territory.

[fol. 44] The estimated annual allowance for amortization and depletion has been allocated to the Lexington District as shown on the following statements.

Annual amortization and depletion allowance for production system property were allocated to Lexington on a gas sales basis which resulted in 56.42 per cent being assigned to the Lexington District.

This basis of allocation was also used for the transportation system amortization charges, with the exception of rights of way and pipe on the main line from Inez to Lexington. Allocation of annual amortization charges for these two classes of property took into consideration that the section of the line east of the Mount Sterling Branch Line is used to transport gas to all consumers of the Central Kentucky Natural Gas Company; that the section between the Mount Sterling Branch Line and Winchester is used to transport gas to all consumers except those in Mount Sterling; that the section of the line between Winchester and the Paris Branch Line is used to transport gas to all consumers except those in Mount Sterling and Winchester, and that the section of the line from the Paris Branch Line to Lexington is used to transport gas to consumers in Lexington and to the Frankfort Natural Gas Company. An accompanying statement shows the detailed derivation of the allocation percentages, resulting in a composite figure of 60.32 per cent of the amortization charges, for rights of way and pipe on the main line, allocated to the Lexington District.

Annual amortization charges for distribution system property required no allocation since the location of this property determined the amounts applicable to the Lexington District.

[fol. 45] Annual amortization charges for general property were allocated on the basis of gas sales, that is 56.42 per cent to the Lexington District.

The annual amortization charge for organization costs was allocated to the Lexington District on the basis of gas sales.

Annual amortization charges for construction overheads, including cost of financing were prorated to the Lexington District in the ratio that the property used and useful for service in the Lexington District bore to the entire property of the Central Kentucky Natural Gas Co., Inc.

The annual allowance for amortization of going concern value was allocated partly in the ratio of the number of consumers in the Lexington District to the total number of consumers on the system, and partly in the ration that obtained for all physical property.

Annual amortization charges for the cost of obtaining new franchises were allocated to the Lexington District on the basis of the number of consumers.

Central Kentucky Natural Gas Co., Inc.

Estimated Annual Allowance Necessary for Amortization and Depletion

Item	Estimated reproduction cost new less deterioration as of Dec. 31, 1926	Estimated net salvage	Remaining life (years)	Annual allowance for amortization and depletion on 3½ per cent sinking fund basis — Entire system: Rate	Entire system: Amount	Lexington district: Basis of allocation	Lexington district: Amount
Organization Costs	$101,600	.....	20	3.54%	$3,597	Gas Sales—56.42%	$2,029
Production System Property:							
Menifee Field:							
Leaseholds	1,975	.....	20	3.54	70	Gas Sales—56.42%	40
Stored Gas	409,663	409,663		.....	.....	.....	.....
Rights of way	4,971	.....	20	3.54	176	Gas Sales—56.42%	99
Gas Wells	110,240	8,200	20	3.54	3,612	" —56.42%	2,038
Field Lines	166,486	10,000	20	3.54	5,540	" —56.42%	3,125
Other Equipment	532	50	20	3.54	17	" —56.42%	10
Total Menifee Field	$693,867	.....			$9,415		$5,312
Red Bush Field:							
Leaseholds	$3,575	.....	2	49.14	$1,757	Gas Sales—56.42%	$991
Measuring Station Structures	699	.....	2	49.14	343	" —56.42	193
Measuring Station Equipment	3,722	1,800	2	49.14	944	" —56.42	533
Gas Wells	21,925	5,800	2	49.14	7,924	" —56.42	4,471
Field Lines	35,939	2,200	2	49.14	16,579	" —56.42	9,354
Total Red Bush Field	$65,860	.....	..	.....	$27,547	.....	$15,542
Total Production System Property	$759,727	.....	..	.....	$36,962	.....	$20,854
Transmission System Property							
Menifee Compressing Station:							
Land owned in Fee	$100	100	20	3.54	.....	.....	.....
Structures	26,784	5,000	20	3.54	$771	Gas Sales—56.42%	$435
Stable Equipment	210	.....	9	9.65	20	" —56.42	11

Equipment	117,613	3,150	20	3.54	4,052	" —56.42	2,286
Total Menifee Compressing Station	$144,707				$4,843		$2,732
[fol. 47]							
Red Bush Compressing Station:							
Structures	$13,184	$2,000	6	15.27%	$1,708	Gas Sales—56.42%	$964
Equipment	50,155		6	15.27	7,659	" 56.42	4,321
Total Red Bush Compressing Station	$63,339				$9,367		$5,285
Main Line—Inez to Lexington:							
Measuring Station Equipment	$499	200	20	3.54	$11	Gas Sales—56.42%	$6
Rights of Way	30,240		20	3.54	1,070	" —60.32%	645
Pipe Lines	1,189,484	60,000	20	3.54	39,984	" —60.32	24,119
Total Main Line	$1,220,223				$41,065		$24,770
Red Bush Branch Line:							
Right of Way	$734		6	15.27	$112	Gas Sales—56.42%	$63
Pipe Line	16,730		6	15.27	2,555	" —56.42	1,442
Total Red Bush Branch Line	$17,464				$2,667		$1,505
Johnson-Magoffin Branch Line:							
Rights of Way	$1,261		8	11.05	$139	Gas Sales—56.42%	$78
Pipe Line	28,269		8	11.05	3,124	" —56.42	1,763
Total Johnson-Magoffin Branch Line	$29,530				$3,263		$1,841
Mt. Sterling Branch Line:							
Rights of Way	$1,353		20	3.54	$48		
Pipe Line	24,017	1,600	20	3.54	794		
Total Mt. Sterling Branch Line	$25,370				$842		

Estimated Annual Allowance Necessary for Amortization and Depletion

Item	Estimated reproduction cost new less deterioration as of Dec. 31, 1926	Estimated net salvage	Remaining life (years)	Annual allowance for amortization and depletion on 3½ per cent sinking fund basis — Entire system: Rate	Entire system: Amount	Lexington district: Basis of allocation	Lexington district: Amount
Paris Branch Line:							
Measuring Station Equipment	$478	200	20	3.54	$10		
Regulators	727		20	3.54	26		
Regulator Structures	216		20	3.54	8		
Pipe Line	67,639	7,500	20	3.54	2,129		
Total Paris Branch Line	$69,060				$2,173		
[fol. 48]							
Telephone Lines	$21,030		20	3.54%	$744	Gas Sales—56.42%	$420
Total Transmission System Property	$1,590,723				$64,964		$36,553
Distribution System Property:							
Lexington Suburbs:							
Land Owned in Fee	900	900	20	3.54			
Structures	1,232		20	3.54	$44	Location	$44
Mains	50,685	25,599	20	3.54	889	"	889
Services	9,950	5,025	20	3.54	174	"	174
Meters	10,303	6,061	20	3.54	150	"	150
Regulators	3,678		20	3.54	130	"	130
Office Furniture and Fixtures	4,853	2,769	20	3.54	74	"	74
Automobiles and Trucks	2,153	1,275	20	3.54	31	"	31
Total Lexington Suburbs	$83,754				$1,491		$1,491

Winchester:							
Land owned in Fee	560	560	20	3.54			
Structures	989		20	3.54	$35		
Mains	63.565	38.759	20	3.54	878		
Services	16.848	10.273	20	3.54	233		
Meters	25.730	15.136	20	3.54	373		
Regulators	2.939		20	3.54	104		
Office Furniture and Fixtures	1.082	744	20	3.54	12		
Automobiles and Trucks	559	400	20	3.54	6		
Tools	410		20	3.54	15		
Total Winchester	$112.682				$1.658		

[fol. 49]

Distribution System Property (Concluded)

Mt. Sterling:							
Land Owned in Fee	$300	$300	20	3.54	$		
Structures	618		20	3.54	22		
Mains	$36.862	20.479	20	3.54	580		
Services	9.858	5.476	20	3.54	155		
Meters	13.461	7.919	20	3.54	196		
Regulators	1.670		20	3.54	59		
Office Furniture and Fixtures	1.052	690	20	3.54	13		
Automobiles and Trucks	1.631	889	20	3.54	26		
Tools	410	228	20	3.54	6		
Total Mt. Sterling	$65.862				$1.057		
Total Distribution System Property	$262.298				$4.206		$1.491

Central Kentucky Natural Gas Co., Inc.—Continued

Estimated Annual Allowance Necessary for Amortization and Depletion

Item	Estimated reproduction cost new less deterioration as of Dec. 31, 1926	Estimated net salvage	Remaining life (years)	Annual allowance for amortization and depletion on 3½ per cent sinking fund basis — Entire system Rate	Entire system Amount	Lexington district Basis of allocation	Lexington district Amount
General Property							
Office Furniture and Fixtures (Oil City, Pa.)	$1,509		20	3.54	$53	Gas Sales—56.42%	$30
Construction Overhead Costs							
Engineering during Construction	$125,557				$6,353	Prorated	$3,428
Legal Expenses during Construction	38,298				1,797	"	957
Administration Expenses during Construction	59,258				2,755	"	1,479
Taxes, Insurance and Damages during Construction	25,532				1,198	"	638
Interest during Construction	177,870				9,000	"	4,840
Total	$426,515				$21,103		$11,342
Cost of Financing	146,028		20	3.54	$5,169	Prorated	$2,800
Miscellaneous Intangible Capital							
Going Concern Value	$248,000		20	3.54	$8,779	Consumers and Property	$6,079
Cost of Obtaining New Franchises	50,000		20	3.54	1,770	Consumers	1,299
Total	$298,000				$10,549		$7,378

[fol. 50]

Working Capital							
Materials and Supplies	$6,551	$6,551					
Cash Required for Operation	76,449	76,449					
Total	$83,000	$83,000					

Total Central Kentucky Natural Gas Co., Inc.	$3,669,400				$146,603		$82,477
[fol. 51]							
Organization Costs	$26,650	$	20	3.54%	$943	Location	$943
Distribution System Property							
City of Lexington:							
Land Owned in Fee	1,920	1,920	20	3.54		Location	
Structures	1,939		20	3.54	69	"	69
Regulators Structures	1,415	817	20	3.54	21	"	21
Mains	290,674	158,080	20	3.54	4,694	"	4,694
Services	72,702	40,167	20	3.54	1,152	"	1,152
Meters	106,669	62,747	20	3.54	1,555	"	1,555
Regulators	5,134		20	3.54	182	"	182
Other Equipment	713	468	20	3.54	9	"	9
Total Distribution System Property	$481,166				$7,682		$7,682
Construction Overheads							
Engineering during Construction	$20,347				$720	Location	720
Legal Expenses during Construction	8,043				255	"	255
Administration Expense during Construction	10,724				341	"	341
Taxes, Insurance and Damages during Construction	5,362				170	"	170
Interest during Construction	33,138				1,167	"	1,167
Total Construction Overheads	$77,614				$2,653		$2,653
Cost of Financing	25,797		20	3.54	913	"	913
Total Lexington Utilities Co., Inc.	$611,227				$12,191		$12,191

[fol. 52] Estimated Annual Allowance Necessary for Extraordinary Maintenance

In order to keep the property in the best operating condition, with the least distortion to net earnings from year to year, provision should be made annually for extraordinary repairs and replacements in addition to ordinary maintenance. This provision is to cover such expenditures as the replacement of pipe, re-rubbering the Dresser couplings, and other unforeseen expenditures which, if not provided for annually, may seriously cripple the Company when it is confronted with large expenditures of this character in a single year. These estimated amounts are necessary only to keep the property in good opertaing condition and they are not considered sufficient to permit of the creation of a reserve. In other words, over a period of years it is anticipated that the expenditures will equal these allowances, and when natural gas is no longer available the property will then be in substantially the same physical condition as at the present time.

As shown on the following statement the allowances for extraordinary maintenance are made for structures, compressing station equipment, pipe lines, telephone lines, furniture and fixtures, automobiles and engineering and interest during construction.

The estimated annual allowance for extraordinary maintenance has been allocated to the Lexington District as follows:

(a) For production system property on a basis of gas sales.

[fol. 53] (b) For transmission system property on a basis of gas sales giving effect to the use which is made of the various parts of the main transmission line.

(c) For distribution system property on a basis of location.

(d) For engineering during construction and interest during construction, on a basis of the ratio which obtained for all other property.

[fol. 54] Central Kentucky Natural Gas Co., Inc.

Estimated Annual Allowance Necessary for Extraordinary Maintenance

Transmission System Property	Estimated reproduction cost new as of Dec. 31, 1926	Annual allowance for extraordinary maintenance: Entire system Per cent	Entire system Amount	Lexington district Basis of allocation	Lexington district Amount
Menifee Compressing Station:					
Structures	$32,796	1.0%	$328	Gas Sales—56.42%	$185
Equipment	152,165	1.0	1,522	" —56.42	859
Total Menifee Compressing Station	.....	.....	$1,850	.....	$1,044
Red Bush Compressing Station:					
Structures	$14,759	1.0%	$148	Gas Sales—56.42%	$84
Equipment	54,543	0.5	273	" —56.42%	154
Total Red Bush Compressing Station	.....	.....	$421	.....	$238
Main Line—Ines to Lexington:					
Pipe Line	$1,351,686	1.0%	$13,517	Gas Sales—60.32%	$8,153
Total Main Line	.....	.....	$13,517	.....	$8,15
Red Bush Branch Line:					
Pipe Line	$17,071	1.0%	$171	Gas Sales—56.42	$96
Total Red Bush Branch Line	.....	.....	$171	.....	$96
Johnson-Magoffin Branch Line	$28,846	1.0%	$288	Gas Sales—56.42%	$163
Pipe Line	.....	.....	.....	.....	.....
Total Johnson-Magoffin Branch Line	.....	.....	$288	.....	$163

Central Kentucky Natural Gas Co., Inc.—Continued

Estimated Annual Allowance Necessary for Extraordinary Maintenance

	Estimated reproduction cost new as of Dec. 31, 1926	Annual allowance for extraordinary maintenance			
		Entire system		Lexington district	
		Per cent	Amount	Basis of allocation	Amount
Mt. Sterling Branch Line:					
Pipe Line	$24,507	1.0%	$245		
Total Mt. Sterling Branch Line			$245		
Paris Branch Line:					
Regulator Structures	$271	2.0%	$5		
Pipe Line	68,322	1.0	683		
Total Paris Branch Line			$688		
Telephone Line	$26,288	2.0%	526	Gas Sales—56.42%	$279
Total Transmission System Property			$17,706		9,991
[fol. 55]					
Distribution System Property					
Lexington:					
Structures	$1,349	2.0%	$27	Location	$27
Mains outside City Limits	51,197	2.0	1,024	"	1,024
Services outside City Limits	10,050	2.0	201	"	201
Office Furniture and Fixtures	5,538	2.0	111	"	111
Automobiles and Trucks	2,550	20.0	510	"	510
Total Lexington			$1,873		$1,873

Winchester:				
Structures	1,117	2.0%	$22	
Mains	77,518	2.0	1,550	
Services	20,546	2.0	411	
Office Furniture and Fixtures	1,488	2.0	30	
Automobiles and Trucks	799	20.0	160	
Tools	456	2.0	9	
Total Winchester			$2,182	
Mt. Sterling:				
Structures	$732	2.0%	$15	
Mains	40,958	2.0	819	
Services	10,953	2.0	219	
Office Furniture and Fixtures	1,380	2.0	28	
Automobiles and Trucks	1,777	20.0	355	
Tools	456	2.0	9	
Total Mt. Sterling			$1,445	
Total Distribution System Property			$5,500	$1,873
General Overhead Costs:				
Engineering during Construction	$131,011		$464	250
Interest during Construction	199,115		1,420	764
Total General Overheads			1,884	$1,014
Total Central Kentucky Natural Gas Co., Inc			$25,090	$12,878

[fol. 56]

Lexington Utilities Co., Inc.—Continued

Estimated Annual Allowance Necessary for Extraordinary Maintenance

Item:	Estimated reproduction cost new as of Dec. 31, 1926	Annual allowance for extraordinary maintenance			
		Entire system		Lexington district	
		Per cent	Amount	Basis of allocation	Amount
Distribution System Property:					
Lexington, Ky.:					
Structures	$3,669	2.0%	$73	Location	$73
Regulator Structures	1,633	2.0	33	"	33
Mains	316,159	2.0	6,323	"	6,323
Services	80,334	2.0	1,607	"	1,607
Other Equipment	935	2.0	18	"	18
Total Distribution System Property	.....	.....	$8,054		$8,054
Construction Overheads:					
Engineering during Construction	$21,447	.....	$81	Location	$81
Interest during Construction	36,505	.....	249	"	249
Total Construction Overheads	.....	.....	$330		$330
Total Lexington Utilities Co., Inc.	.....	.....	$8,384		$8,384

[fol. 57] Central Kentucky Natural Gas Company, Inc.

Calculation of Percentages Used to Allocate Rights of Way and Pipe on Main Line—Ines to Lexington

Location	Length of line (Ft.)	Cost @ $2.288 per (Ft.)	Lexington District Gas Sales (Per Cent)	Lexington District Gas Sales Amount
Ines to Mt. Sterling Branch Line	428,637	$980,721	56.42%	$553,323
Mt. Sterling Branch Line to Winchester	72,636	166,191	60.96	101,310
Winchester to Paris Branch Line	11,847	27,106	70.69	19,161
Paris Branch Line to Lexington	77,652	177,668	79.70	141,601
Total	590,772	$1,351,686		$815,395
Per Cent of Total		100.00%		60.32%

Calculation of Gas Sales Percentages Applicable to the Four Sections of the Main Line—Ines to Lexington

Mt. Sterling Branch Line to Winchester (Serves Lexington, Winchester and Wholesale Consumers)

	4 Year Sales (M. c. f.)	Per Cent of Total
Lexington	5,145,115	60.96%
Winchester	1,162,793	13.78
Wholesale	2,132,791	25.26
Total	8,440,699	100.00%

Paris Branch Line to Lexington (Serves Lexington and Frankfort)

	4 Year Sales (M. c. f.)	Per Cent of Total
Lexington	5,145,115	79.70%
Frankfort	1,310,676	20.30
Total	6,455,791	100.00%

Winchester to Paris Branch Line (Serves Lexington and Wholesale Consumers)

	4 Year Sales (M. c. f.)	Per Cent of Total
Lexington	5,145,115	70.69%
Wholesale	2,132,791	29.31
Total	7,277,906	100.00%

[fol. 58] Clerk's certificate to foregoing exhibit omitted in printing.

[fol. 59] Sections 8, 24 and 25 of Franchise Ordinance

Sec. 8. The board shall personally, or through such assistants as it may employ or designate, have at all times access to all or any of the property owned or used in part or in whole by the Company for the purpose of producing, transmitting, distributing, furnishing or selling natural, manufactured or mixed gas in the City of Lexington. In

like manner the Board or its assistants may at all times enter in or upon said property to inspect or examine it and may inspect, examine and verify all or any of the accounts, books, records, contracts, documents or papers of the Company. Any person other than a member of the Board shall upon demand of the Company produce his authority from the Board.

[fol. 60] Sec. 24. The Company hereby agrees and binds itself by the acceptance of this franchise to take all reasonable means and measures necessary to furnish an adequate supply of natural gas to the City of Lexington and its inhabitants at all times during the term of this franchise. When it shall appear to the Company that it may, because of conditions beyond its control, become unable to furnish natural gas in sufficient quantities to meet the demands of the City and its inhabitants at all times and that it will become necessary to use manufactured gas to supplement the natural gas supply, the Company shall give written notice to the Board and shall file therewith a statement setting forth fully the facts in relation to the supply of natural gas, the proposed proportion of manufactured gas to be mixed with natural gas, the heating value of the mixed gas to be furnished, the pressure at which it will be distributed, and the time when said mixed gas service will be available, together with a schedule of proposed rates, charges or compensation for said mixed gas service which it claims will be just and reasonable rates, charges or compensation for mixed gas. If the parties are unable to agree as to whether the supply of natural gas is insufficient to meet the demand in Lexington at all times and that manufactured gas must be used to augment said supply, or as to the proportion of manufactured gas to be mixed with natural gas, or as to the pressure, or as to the heating [fol. 61] value requirements, or as to date when such mixed gas may be used, or as to the rates and charges for such mixed gas, then the parties shall proceed as provided in Section 201e-1 to 201e-20, inclusive, of the Kentucky Statutes, or in such manner as the law may then provide.

Sec. 25. The Company hereby agrees and binds itself by the acceptance of this franchise to take all reasonable means and measures necessary to furnish an adequate supply of mixed gas to the City of Lexington and the inhabitants thereof at all times during the remainder of the term of

this franchise. Whenever it shall appear to the Company that it may, because of conditions beyond its control, become unable to furnish mixed gas in sufficient quantities to meet the demands of the City and its inhabitants at all times, and that it will become necessary to use manufactured gas exclusively, the Company shall give written notice thereof to the Board and shall file therewith a statement setting forth fully the facts in relation to the supply of mixed gas, the character of the manufacured gas which it proposes to supply, the heating value thereof, the time when said manufactured gas will be available, the pressure at which it will be distributed, together with a schedule of proposed rates, charges or compensation for said manufactured gas which it claims will be just and reasonable rates, charges or compensation for manufactured gas. If the parties are unable to agree as to whether the supply of mixed gas is insufficient to meet the demand in Lexington at all times and that manufactured gas must be used exclusively, or as to the date from and after which manufactured gas may be distributed and sold in the City of Lexington, or as to the rates and charges for manufactured gas, or as to the pressure or heating value requirements of said manufactured gas, then the parties shall proceed as provided in Sections 201e-1 to 201e-20, inclusive, of the Kentucky Statutes, or in such other manner as the law may then provide.

[fol. 62] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Oct. 30, 1933

To Charles Elmore Cropley, Clerk United States Supreme Court, Washington, D. C.:

The Appellees, Mrs. George Hignight and others, request and direct you to have printed the following portions of the record which they have caused to be certified by the Clerk of the United States District Court, for the Eastern District of Kentucky, and filed herein, as follows, to-wit:

1. All of the record designated in the Præcipe.

2. All of the record included in the amendments to the Appellant's Statement of Evidence, together with the Exhibits thereto attached.

3. Sections 8, 24 and 25 of the Franchise Ordinance heretofore filed and appearing in the transcript filed by the Appellant herein.

Dated October 27, 1933.

J. A. Edge, Attorney for Mrs. George Highnight and Others, Appellees.

Service of the aforesaid designation or parts of the record to be printed is hereby accepted this 27th day of October, 1933.

D. L. Hazelrigg, Henry T. Duncan, Attorneys for the Central Kentucky Natural Gas Company. Robert H Winn and Clinton M. Harbison, B. P. Wootton, Attorneys for Railroad Commission et al.